

**SETTLEMENT AGREEMENT BETWEEN**  
**THE MISSOURI REAL ESTATE COMMISSION**  
**AND DARLENE R. VOGELSMEIER**

Darlene R. Vogelsmeier (Vogelsmeier ) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Vogelsmeier's licenses as a real estate broker, no. 1999144338, and a broker officer, no. 1999144267, will be subject to discipline. Pursuant to § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo (Supp. 2013). The MREC and Vogelsmeier jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo (Supp. 2013).

Vogelsmeier acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Vogelsmeier may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to her by law, Vogelsmeier knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Vogelsmeier acknowledges that she has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Vogelsmeier stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Vogelsmeier's licenses as a real estate broker, no. 1999144338, and a broker officer, no. 1999144267 are subject to disciplinary action by the MREC in

accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Vogelsmeier in Part II herein is based only on the agreement set out in Part I herein. Vogelsmeier understands that the MREC may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

#### **I.**

#### **Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the MREC and Vogelsmeier herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo (Supp. 2013), for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo (as amended), relating to real estate salespersons and brokers.
2. Vogelsmeier holds a real estate broker license, no. 1999144338, and a broker officer license, no. 1999144267. Vogelsmeier's broker and broker officer licenses are current and active, and were current and active at all

times relevant herein. Vogelsmeier previously held a broker salesperson license, no. 1999033862. Vogelsmeier's broker salesperson license was canceled on December 19, 1999, when it was returned to the MREC by her broker, and it expired on June 30, 2000.

3. From September 10, 2012 through September 13, 2012, the MREC conducted an audit of Vogelsmeier's business records and escrow accounts related to her broker's license ("the audit").

4. The audit covered the time period from September 2011 through August 2012 ("the audit period").

5. During the audit period, Vogelsmeier maintained a property management escrow account at Wood & Huston Bank, account no. xxxxx218 (hereinafter "the property management escrow account").

6. When the MREC's auditor attempted to reconcile the liabilities for the property management escrow account, as shown by Vogelsmeier's records, with the August 31, 2012 bank statement for the account, there was an overage of \$9,549.33. Vogelsmeier was unable to identify the owner of those funds.

7. During the audit period, Vogelsmeier also maintained a security deposit escrow account at Wood & Huston Bank, account no. xxxxx226 (hereinafter "the security deposit escrow account").

8. When the MREC's auditor attempted to reconcile the liabilities for the security deposit escrow account, as shown by Vogelsmeier's records, with the account balance as of August 31, 2012, there was an overage of \$5,865.70. Vogelsmeier was unable to identify the owner of those funds.

9. Because she was unable to identify the owner or owners of the overages in the property management escrow account and the security deposit escrow account, Vogelsmeier violated §§ 339.105.1, and 339.105.3 RSMo (Supp. 2013), which state:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

...

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the

commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

10. In nine instances during the audit period, management agreements entered into by Vogelsmeier did not specify whether security deposits and/or pre-paid rent would be held by Vogelsmeier or the owner of the property.

11. By failing to ensure that her management agreements specified who would hold security deposits and/or pre-paid rents, Vogelsmeier violated 20 CSR 2250-8.090(9)(c), which states:

(9) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall:

...

(C) Specify whether security deposits and prepaid rents will be held by the broker or the owner[.]

12. Vogelsmeier's conduct, as described above, constitutes a lack of integrity and fair dealing, and/or demonstrates a lack of competence to transact the business of a real estate broker, broker officer, and broker salesperson in such a manner to safeguard the interest of the public.

13. Vogelsmeier's conduct, as described above demonstrates bad faith or incompetence, misconduct, or gross negligence.

14. Based on the conduct and violations set forth herein, cause exists to discipline Vogelsmeier's real estate licenses under § 339.100.2(1),(15), (16) and (19), RSMo (Supp. 2013), which states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

15. Section 339.040.1, RSMo (Supp. 2013) states:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

## **II.**

### **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in



this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo (Supp. 2013).

1. Within 30 days of this settlement agreement becoming effective, Vogelsmeier shall surrender her broker-officer license to the MREC, and complete all steps necessary to change her broker license to salesperson license, including, but not limited to, returning the broker license to the MREC so that it may be reissued as a salesperson license, and completing a form for Closing of a Real Estate Brokerage/Sole Proprietorship.

2. **Vogelsmeier's license is on probation.** Upon issuance by the MREC, Vogelsmeier's new license as a real estate salesperson will be on PROBATION for a period of TWO YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Vogelsmeier shall be entitled to practice as a real estate salesperson under Chapter 339, RSMo, as amended, provided Vogelsmeier adheres to all the terms of this agreement.

3. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Vogelsmeier shall keep the MREC apprised at all times of her current address and telephone number at each place of residence

and business. Vogelsmeier shall notify the MREC in writing within ten (10) days of any change in this information.

B. Vogelsmeier shall timely renew her real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her license(s) in a current and active status. During the disciplinary period, Vogelsmeier shall not place her real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Vogelsmeier may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Vogelsmeier applies for a real estate license after surrender, Vogelsmeier shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Vogelsmeier shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said

meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Vogelsmeier shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Vogelsmeier shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement/Joint Stipulation.

F. Vogelsmeier shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Vogelsmeier's license as a real estate salesperson under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Broker Acknowledgement. If at any time during the disciplinary period Vogelsmeier wishes to transfer her license affiliation to a new broker/brokerage, she must submit a Broker

Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer her license. Vogelsmeier must obtain the Broker Acknowledgement form from the MREC.

H. Vogelsmeier shall not act as a designated or supervising broker for a real estate brokerage.

I. Vogelsmeier shall not be involved in the supervision of escrow activity for any brokerage.

J. Vogelsmeier shall not participate in property management activities on behalf of others.

4. Upon the expiration of the disciplinary period, the license of Vogelsmeier shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Vogelsmeier has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Vogelsmeier's license.

5. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and

opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

6. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Vogelsmeier of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

7. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

8. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Vogelsmeier agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

9. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

10. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

11. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

12. Vogelsmeier, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement

Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

13. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

Licensee

Missouri Real Estate Commission

Darlene R. Vogelsmeier  
Darlene R. Vogelsmeier

Joseph Denkler  
Joseph Denkler, Executive Director

Date: 3-5-15

Date: 3/16/15

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